PART IV

Section 2-C (ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR SECRETARIAT

Labour Dispute.—Industrial dispute between the workmen and the Management of the Managing Director, M/s. Mysore State Agro Industries Corporation Ltd., Hebbal, Bangalore.

Award of the Presiding Officer, Labour Court, Hubli, Published.

Read the following Papers :

(1)Letter No. LCH/2533/74-75, dated 10th March 1975, from Srt H. L. Narayana Gowda, Presiding Officer, Labour Court Hubli.

BEFORE THE LABOUR COURT AT HUBLI

Reference ID (LCH) Claim No. 57/74

Present :

Sri H. L. Narayanagowda, B.A., LL.B.,
Presiding Officer.

Date : 10th March 1975

laimant :

Sri Nijaguni Shankar Doddamani, Ex-Tractor Driver, Mysore State Agro Industries Corporation, Jamkhandi, District Bijapur.

Vs.

Respondent :

The Managing Dtrector M/s. Mysore State Agro Industrits Corporation Ltd., Hebbal, Bangalore.

Order No. SWL 636 LLD 74, dated 16th September 1974

JUDGEMENT AND AWARD

The Government of Karnataka have made this reference under clause (c) of sub-section (1) of Section 10 of the I.D. Act referring the dispute between Sri N. S. Doddamani, Ex Tractor Driver, Jamkhandi branch of Mysore State Agro Industries Corporatton and the Management of M/s. Mysore State Agro Industries Corporation Ltd., Bangalore for adjudication to this Court on the following points of dispute.

"Is the Management of M/s. Mysore State Agro Industries Corporation Ltd., No. 10 Ali Askar Road, Bangalore-1-B, justified in terminating the services of Sri Nijaguni Shankar Doddamani, Tractor Driver, Branch Jamkhandi, District Bijapur, with effect from 26th February 1971 ?

If not, is the said workman entitled for reinstatement in service with back wages and continuity of service and other consequential benefits ?

2. The claimant in his claim statement states as follows :

His services were terminated from 26th February 1971. At that he was drawing a salary of Rs. 212 p.m. including D.A. his salary from 26th February 1971 till 26th September 1974 for the period of 3 years and 7 months will come to Rs. 9,116 less Rs. 400 paid Rs. 8,716 may be awarded to him with all emoluments from the Respondent. He may be immediately reinstated in the service of the Corporation on the said salary in the grade of Rs. 90-5-150-10-15-270 in his former post at Jamkhandi. The Respondent Corporation was not at all justified in terminating his service from 26th February 1971. It is baseless and false that he often used to be sick. He sought sick leave to which he was entitled according to rules and it was no ground for abrput termination of his service. In fact the Corporation had regularised his service and was appointed on the staff of the Corporation. Under condition No. 2

of the order of the Managing Director of the Corporation, he was eligible for leave and other benefits. He prays that he may be reinstated in service with continuity of service and full backwages.

3. The Respondent in its written statement pleads as follows:

At the outset the Respondent submits that the reference is bad in law and is liable to be rejected in limine in as much as there is a factual error in the order of reference. The order of reference stats that the termination was with effect from 26th February 1971. The claimant in his claim statement has also aleged that he was terminated from service with effect from 26th February 1971. But it is submitted that in fact the workman was not at all terminated from service, much less on 26th February 1971. All that was done on 26th February 1971 was that a memo was issued to the claimant stating that he was applying for leave continuously on the ground of health and that the management feels that his health may not permit for the post of tractor driver. He was instructed that if he took leave his service would be terminated on the ground of health. He was further instructed to produce medical certificate for his state of health. This memo it is submitted can never be construed as a letter terminating his services. It is further submitted that as letter on 2nd April 1971 the Assistant Engineer, Jamkhandi wrote to the Administrative Officer of the Respondent bringing to his notice the heavy quantum of leave applied for by the first party and seeking his instructions as to the action to be taken in the matter, Therein he had specifically stated that the claimant had again applied for leave from 2nd February 1971 to 18th March 1971, along with a Medical Certificate. In these circumstances it is apparent that the services of the claimant were not at all terminated as on 26th February 1971 and hence it is submitted that the order of reference which proceeds on an erroneous assumption of facts which are not true is not maintainable. Even otherwise there is no industrial dispute. Without prejudice to the

above contention it is further submitted that the claimant resigned and subsequently submitted his letter of resignation with effect from 18th February 1971 and requested that his letter of resignation with effect from 18th March 1971 and requested that his accounts may be settled. As submitted above he had applied for leave upto 18th March 1971 and it is with effect from that day he wanted the resignation to be given effect to. However he again requested for being given a temporary appointment as driver which was given to him and he worked as such temporary driver till 30th May 1971 and thereafter stayed away from attending to his duties without information and therefore he was treated as having abandoned his service. From the above narration of facts it is claer that this is not at all case of termination of service by the second party. On the other hand it is the action of the first party workman himself in abandoning his services,, that brought about a cessation of his service. It is submitted that the order of reference which proceeds on the basis that the first party workman was terminated from service is further bad on this count also. In this connection it is submitted that the claimant was a person who was taking leave often for long periods on grounds of ill health. From 6th February 1970 to 4th May 1970 he had applied for leave for as many as 74 days. He was a Chronically sick man. He was working as a tractor driver which work is of a hard and onerous nature. He had expressed his desire to resign from service and further he stayed away from work with effect from 1st June 1971. In these circumstances it is submitted that the management was perfectly justified in treating his case as one of abandonment. It was a *bonafide* decision. No malafides can be attributed to the second party and in fact the claimant also does not do so. On the other hand the second party has been very considerate in his case and has gone on giving him leave and trying to help him to the extent possible. In the circumstances explained above it is submitted that the claimant is not entitled to any relief. Even if for some reason the court were to hold that he is entitled to any relief to is submitted

that he is not be reinstated in as much as he is chronically sick man and will sot be able to continue the job of tor driver which is a very hard job and therefore it wo be in his interest itself not to claim reinstatement. Had only put in less than 2 years service. He was appointed on daily wages from 7th May 1969 and his servicees were regularised only with effect from 1st January 1970. During his short tenure of his service he mostly remained on leave. In these circumstances also it is submitted that he is not entitled to any relief. It is submitted that the claim statement filed by the workman is vague and contains no grounds. Except saying that he was not often sick and that he sought sick leave to which was entitled according to rules and that was no ground for termination of his services, the first party has not said anything. It is submitted that the leave rules applicable to him did not entitle to him to such a long period of leave which he availed. As submitted above after his regularisation with effect from 1st January 1970 within a period of 5 months he availed 74 days leave. He further applied for leave for 45 days from 2nd February 1971 to 18th March 1971. This much of leave he was not entitled to under the leave rules. It is submitted that as stated above the services of the first party workman were not at all termintted by the Respondent on account of his sickness. In these circumstances his allegation that he was terminated from service on the ground of sickness is baseless. The Respondent thus submits that this is not a case of termination of service by the Respondent at all ; but it is a case of abandonment of service by the first party workman himself who first submitted his resignation and then worked as a temporary workman for a few days and then abandoned his service. It prays that the reference may be dismissed.

4. In support of its case the Respondent has examined its Manager Sri Subramanyam MW-1 who was Assistant Engineer at the relevant time, and closed Ex. M 1 to M-12

are ocuments filed for him. The claimant has not exan any witnesses. He has produced no documents. He been placed *ex parte.*

I have perused the records and heard Sri B. C. Prakar, learned Representative for the Respondent.

6. MW-1 Sri Subramanyam, Manager, has stated that since 2 years he is working as Manager' Pesticide, Agro-Industries, Bangalore, Prior to that he was working in Hubi. Prior to his coming to Hubli he was working at Jamkhandi. He knows the claimant. The claimant was Tractor Driver in their office at Jamkhandi. He was appointed in 1969. Ex. M-1 is the office copy of the appointment Order dated 30th April 1969. It was temporary appointment. Subsequently his services were regularised. Ex. M-2 is the office copy of the appointment Order dated 31st December 1969. The claimant has signed Ex. M-2. The claimant was not attending the office regularly In 1970 the clamast did not attend duties for 70 to 75 days. He used to tell him to attend office regularily. He used to say that he was not keeping well. Some times he used to produce Medical Certificate. Some times he was not producing anything. In 1971 the claimant was again not regular in attendance. On 3rd February 1971 the claimant made the application Ex. M-3 dated nil applying for 2 days leave. Leave was granted for 2 days. Again on 6th 1971 the claimant applied for extention of leave for 2 days. i.e., 5th and 6th also. Afterwards the claimant did not attend the office at all. Neither did he apply for extention of leave. On 26th February 1971 he issued the memo to the claimant and the office copy of the memo is Ex. M-5. In the original of Ex. M-5 he called upon the claimant to come back to duty. But he did attend the office at all. On 19th March 1971 the claimant attend the office. He gave leave application dated 19th March 1971 Ex. M-6 along with Medical Certificate. Ex. M-7. He gave warning to the claimant and he asked him to attend office regultrly. He told the claimant that he would report his irregular

attendance to the Head Office. He promised to be regular in future. The claimant stated that he would resign if the rules did not permit his continuance. Even then he continued him in service. His service were not terminated because of his absence. Ex. M-8 is the voucher dated nil, issued by the claimant for having received the salary for the month of March. They deducted his salary for the days of absence in March. After he returned to duties they began to pay him his salary on monthly basis itself. He was paid likewise for the months of April and May. Ex. M-9 is the voucher issued by the claimant dated nil for having received salary for the month of April Ex. M-10 is the office copy of acquittance roll for the month of May. Then he reported the matter to the Head Office. Ex. M-11 is the office copy of his letter to the Head office in respect of the claimant dated 2nd April 1971. Subsequently he wrote another letter Ex. M-12 is the office copy of that letter dated 1st May 1971. According to the records the claimant has worked till the end of May 1971. They did not terminate the service of the claimant on 26th February 1972. Upto end of May 1971 the claimant worked since then he is not to be heard at all. He himself has abandoned the work.

7. On the face of it the reference is bad because the Respondent has not terminated the service of the claimant, from 26th February 1971. MW-1 has sworn that since May 1971 the claimant is not to be heard at all. This is a case of abandonment of service and not termination of service. The claimant his himself abandoned the work and now he wants reinstatement. There is no question of reinstatement because his services have not been terminated. The question of reinstatement arises only when the services of the claimant have been illegally terminated. The reference is defective on this ground.

8. Now the claimant can go and report to duty if he so desires. The Respondent may take disciplinary action against him. That is another matter. But he is free to go and report to duty because his services have not been

terminated. He is still in the employment of the Respondent. But the reference does not survive because the service of the claimant have not been terminated. The reference must be rejected.

AWARD

9. The reference is rejected. No costs.

Hubli,
10th March 1975.

H. L. NARAYANAGOWDA,
Presiding Officer,
Labour Court, Hubli.

ORDER

Bangalore, dated 22nd March 1975

S.O. 1105.—WHEREAS by State Government Order No. SWL 636 LLD 74, dated 16th September 1974, the Industrial Dispute between the workmen and the Management of M/s. Mysore State Agro Industries Corporation Ltd., Hebbal, Bangalore, was referred to the Labour Court, Hubli, for adjudication.

AND, WHEREAS the Labour Court, Hubli has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above, in the *Karnataka Gazette.*

[No. SWL 68 LLA 75].

By Order and in the name of the Governor of Karnataka,

K. MYLARAPPA,
Under Secretary to Government,
Social Welfare and Labour Department.